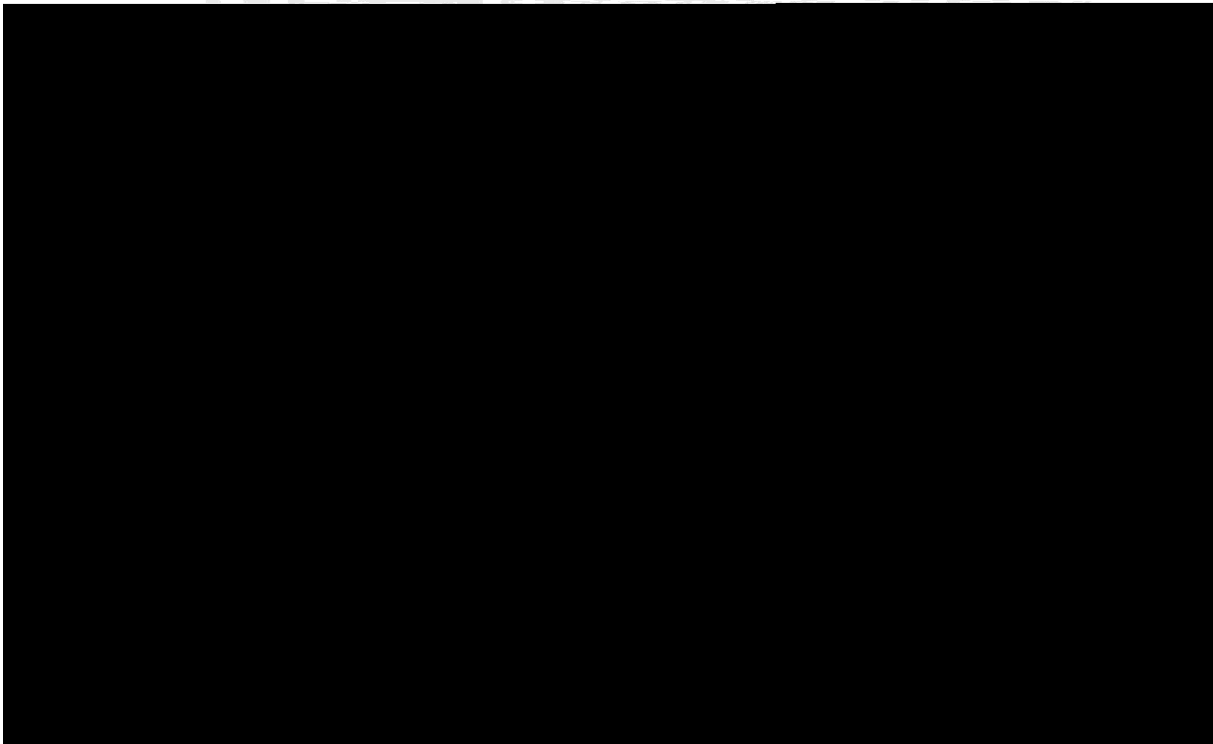




Judgment No. 2018-UNAT-846



Counsel for Applicant:

Antje Kunst

Counsel for Respondent:

Dorota Lost-Sieminska



entitlements from the date of his unlawful separation until the date of the Judgment and the one year's net base salary ordered by the Appeals Tribunal; as well as interest on the compensation awarded at the applicable US Prime Rate calculated from 5 April 2016, the date of separation, to the date of satisfaction of judgment.

7. By letter dated 6 October 2017, the Director, Legal Affairs and External Relations Division, IMO, advised that the IMO had elected payment of compensation in lieu of rescission of summary dismissal and Mr. Muindi would be paid one year's net base salary. In addition, he would be compensated for his annual leave balance of 60 days minus outstanding telephone charges.

8. By e-mail dated 24 October 2017, Mr. Muindi responded that he would like the Judgment to be "properly implemented", that discussions between the IMO Administration and the Staff Association were underway and that the IMO had ignored his request for payment of interest.

9. On 27 October 2017, the IMO paid Mr. Muindi a total amount of 13,921,535.21 Kenyan

13. Mr. Mundi contends that the satisfaction of judgment should be his separation date for the purposes of calculating his entitlements including making contributions to the United Nations Joint Staff Pension Fund (Pension Fund). Alternatively, the separation date should be one year after the summary dismissal of 5 April 2016, i.e. 5 April 2017, to take into account the in-lieu compensation of one year's net base salary for the purposes of determining his entitlements including making contributions to the Pension Fund. In the further alternative, his separation date should be the date of the unlawful decision of 5 January 2017.

14. Mr. Muindi requests that in accordance with the Appeals Tribunal's consistent case law, the IMO pay interest on the compensation awarded at the applicable US Prime Rate calculated from 5 April 2016 to the date of satisfaction of judgment.

#### **The IMO Secretary-General's Comments**

15. The IMO Secretary-General contends that the Judgment is clear in that it only ordered the rescission of the decision of summary dismissal and in the alternative, payment of one year's net base salary at the rate in effect in March 2016. The compensation was granted in lieu of rescission and not in lieu of reinstatement which is in accordance with Article 9(1)(a) of the Appeals Tribunal's Statute (Statute). Therefore, as it was decided to pay compensation in lieu of rescission of the decision of summary dismissal, the summary dismissal was never rescinded and the separation date remains the date of the summary dismissal on 5 April 2016. Moreover, whether or not further compensation is payable to Mr. Muindi, in addition to the in-lieu compensation, is unrelated to the separation date.

16. The Appeals Tribunal did not order the payment of loss of earnings or interest payments in addition to the in-lieu compensation. If the Appeals Tribunal now ordered these additional components of compensation, this would be a violation of Article 10(6) of the Statute, which stipulates that Appeals Tribunal judgments are final.

17. An interpretation to the contrary would also go against Article 9(1)(b) of the Appeals Tribunal Statute which stipulates that compensation shall normally not exceed two years' net base salary. If Mr. Muindi was paid salaries, emoluments and entitlements from the date of his separation until the Judgment and the additional one year's net base salary, this compensation would exceed the limit of Article 9(1)(b) of the Statute. The Appeals Tribunal did not find that there were exceptional circumstances allowing a higher compensation.

18. Mr. Muindi's contention that consistent case law requires payment of interest on any compensation awarded is not correct. The Appeals Tribunal did not rule that interest should always be paid on compensation awarded, but instead that the UNDT has the power to award pre- and post-judgment interest. In the present case, the Appeals Tribunal decided not to award interest on the compensation.

19. In an effort to reach an amicable solution, the IMO had offered to pay interest on the in-lieu compensation from the date that the compensation became due, i.e. from the date the Judgment was issued (14 July 2017). This is in line with the consistent jurisprudence that, if interest is actually awarded, such interest is to be paid from the date on which the entitlement became due. Since Mr. Muindi made an application for interpretation before the interest payment was made and since the IMO's interpretation of the Judgment does not entail payment of interest, the IMO has withdrawn its amicable offer for interest payment.

20. The IMO Secretary-General requests that his interpretation of the Judgment be confirmed.

### **Considerations**

21. Under its statutory framework, the Appeals Tribunal has authority to decide on applications for interpretation of a judgment issued by the Appeals Tribunal. Article 11(3) of the Statute reads: "Either party may apply to the Appeals Tribunal for an



**Judgment**

26. Mr. Muindi's application for interpretation of judgment is rejected.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2018 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Entered in the Register on this 10<sup>th</sup> day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar